IN THE

# SUPREME COURT

OF THE

UNITED STATES.

H. L. Pinney, et. al.,
*Plaintiffs in Error.*

*vs.*

R. T. Nelson,
*Defendant in Error.*

## POINTS AND AUTHORITIES OF PLAINTIFFS IN ERROR.

### STATEMENT OF FACTS.

This is an action brought by the defendant in error against plaintiffs in error to recover judgment against them upon a claim against the Los Angeles Iron & Steel Company, a corporation, organized under the laws of the state of Colorado. [Tr. fol. 24.]

The only question involved in the case is whether the provisions of Sec. 322 of the Civil Code of California are invalid because in violation of the provisions of the constitution of the United States. [Tr. fol. 22.]

As the amount involved was not sufficient to give jurisdiction upon appeal to the Supreme Court of

California, the action was brought up to the Supreme Court of the United States upon writ of error.

## SPECIFICATIONS OF ERROR.

### I.

The court erred in finding that the provisions of section 322 of the Civil Code of California are not unconstitutional and invalid and contrary to the provisions of section 10 of the Constitution of the United States, providing that no state shall pass a law impairing the obligations of a contract.

### II.

The court erred in finding that the provisions of section 322 of the Civil Code of California, attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation, are not invalid, unconstitutional and violation of the provisions of section 1, of article XIV of the Constitution of the United States, providing that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### III.

The court erred in rendering judgment for plaintiff, because the provisions of section 322 of the Civil Code of California, attempting to provide that the stockholders of a foreign corporation shall be liable for the indebtedness of the corporation, are unconstitutional, invalid and in violation of the provisions of the constitution of the United States, mentioned in the above assignments of error.

## ARGUMENT.

**That Portion of Section 322 of the Civil Code of California, Providing for Liability of Stockholders of Foreign Corporations for the Indebtedness of such Corporations, is Invalid, Because in Conflict with the provisions of the Constitution of the United States.**

The only question involved in this case is as to the validity of the following portion of section 322 of the Civil Code of California, to wit:

"The liability of each stockholder of a corporation, formed under the laws of any other state or territory of the United States, or of any foreign country, and doing business within this state, shall be the same as the liability of a stockholder of a corporation created under the constitution and laws of this state."

This provision must either be good as to all foreign corporations doing business in California, and create a liability for all of their stockholders for the indebtedness of the corporation, which may be enforced wherever the stockholders may be found, or it is absolutely void. It cannot be valid as to some foreign corporations and not as to others; or be held valid as to residents of California and invalid as to residents of other states.

It is general in its terms and intended to apply to all foreign corporations that do business in California, and if valid, must be so as to all corporations, including those not organized to do business in California. It is not a provision which is severable and can be applied to some and not to others. There are no separate provisions into which it can be divided and a portion of them held constitutional and a portion unconstitutional, but it must all stand and fall together.

People v. Perry, 79 Cal. 115.

"We know of no precedent for holding that a clause of a statute, which as enacted is unconstitutional, may be changed in meaning in order to give it some operation, when admittedly it cannot operate as the legislature intended."

The question to be determined is, therefore, whether a state can create new liabilities and responsibilities for the stockholders of a foreign corporation, or in other words, make a contract for them without their consent.

The Code provision in question, is contrary to the principle upon which statutes creating a stockholder's liability have been sustained. Such statutes have been held good, because primarily they rest upon the contract of the parties. Thus the liability of the stockholder of a corporation arises from the fact that when he becomes a stockholder, he contracts with reference to the statutes of the state of the incorporation, and is therefore subject to all the liabilities which such statutes impose. His liability is therefore the consequence of his own act, and one to which he has subjected himself and is not the mere arbitrary creation of a statute undertaking to make a contract for him.

This principle has been followed by all the decisions of the Supreme Court of California and even in those which hold that the stockholders of a corporation are liable, under the provisions of the constitution and code, imposing obligations not existing at the time they became stockholders, because the constitution of 1849 reserved to the legislature the power to alter all laws with reference to corporations. In such case, the stockholders created a liability, because they contracted with reference to existing statutes, which authorized the legislature to impose additional obligations upon them.

"It is objected, however, that if the provisions of

the code and constitution are applicable, they impose obligations upon appellants for which they were not liable when they became stockholders, and are in conflict with that provision of the constitution of the United States, which prohibits the states from passing laws impairing the obligation of contracts, and are, therefore, as to them, unconstitutional and of no effect.

"The answer to this objection is that the constitution of 1849 provided: "Corporations may be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed. [Const., Art. IV. Sec. 31.]

"Under the authority thus conferred both the legislature and the people had power to change the law in regard to the liability of stockholders, without violating any provision of the constitution of the United States.

"*In the Matter of Empire City Bank*, 18 N. Y., 199, a similar question arose. That was a proceeding to enforce a personal liability of stockholders for the debts of the bank under an act passed after the bank was incorporated. The court by Denio, J., said:

"The statute under which the proceedings were had was challenged as being in violation of the constitution of the United States and of this state. By the federal constitution, no state can rightfully enact a law impairing the obligation of contracts. It is argued, that by the general banking law, the association which it authorized are alone responsible for its contracts, the shareholders being wholly exempt from liability, and it is insisted that this is in the nature of a contract between the state and the shareholders, and that the constitutional guaranty of the integrity of contracts, in the national constitution, would be illusory if the state could, by changing its constitution, subvert all existing engagements; and hence, that the guaranty applies as well to state constitutions as to other state laws. Without denying or affirming the soundness of these positions, it is enough to say that the general banking law expressly reserved to the legislature the power to alter or re-

peal it, so that any changes which it or the people think proper to make, are fully authorized by the provisions of the supposed contract itself. [See also the following cases, which are to the same effect: In the matter of Lee, etc., Bank, 21 N. Y. 9; In the matter of Reciprocity Bank, 22 N. Y. 9; Sleeper v. Goodwin, 67 Wis. 577; Tomlinson v. Jessup, 15 Wall 454; Meadow Dam Co. v. Gray, 30 Me. 551."]

McGowan v. McDonald, 111 Cal. 66.

"*How the Liability Arises.*—A provision in the charter or general law under which a corporation was formed, declaring that its shareholders shall be individually liable to creditors, does not of itself, by force of the legislative act, render them individually liable. It is merely a legislative enactment that any person who shall become a shareholder in the corporation, or, in other words, enter into the contract of membership, shall at the same time assume an individual liability to the creditors of the company. The function of the legislature in creating this liability is merely to declare the legal effect of the voluntary acts of the parties, and to enable them to carry out their purposes in a manner which would not have been authorized at common law. When a person becomes a shareholder in a corporation, he agrees with all the other shareholders to unite with them upon the terms provided by the company's charter; he also undertakes to become liable to any person who shall give credit to the corporation, to the extent of the capital which he has agreed to contribute.

If the company's charter provides that the shareholders shall be subject to a special individual liability to creditors, persons becoming shareholders agree to become liable, both in a corporate capacity and individually, to all persons who shall give credit to the corporation. They offer to all the world to become liable, in their corporate capacity, to the extent of the capital which they have agreed to contribute for the purpose of carrying on the company's business, and they offer to become liable individually to the amount expressly provided by their charter or incorporation law. Parties who contract with the corpora-

tion contract upon the faith of this liability, held out as their security; and the offer of the shareholders, being thereby accepted, ripens into a binding contract."

Morawetz on Corporations, Sec. 870.

"When an individual becomes a stockholder in a corporation, it is with the implied assent on his part to the right of the legislature to alter and amend the law within the scope of the constitutional provision, and is as binding upon him as a contract to like effect of his own making would be."

Market St. Ry. Co. v. Hellman, 109 Cal. 584;
Glenn v. Saxton, 68 Cal. 353.

As the contract is complete at the time of the organization of a corporation, no legislature has the power to change the contract or impose a new obligation, except the legislature of the state in which the incorporation took place, and that only when the right to alter the law with reference to the corporation is reserved either in the constitution or statutes, prior to its organization.

To impose any liability, not created by the original contract impairs the obligations of the contract and takes property without due process of law, because it subjects the property of the stockholder to liability upon a contract made without his consent, and without giving him an opportunity to be heard.

The relation of the creditor of a corporation to the stockholder arises through the contract between the corporation and the stockholders. In the case of a California corporation, the stockholder, by his subscription for stock, agrees that he will pay his proportion of the debts incurred by the corporation, as the statute imposing such a liability becomes a part of his contract of subscription. But the subscriber to the stock of a Colorado corporation only contracts for such liability as the statutes of Colorado impose, and it

is admitted in this case, that the statutes of Colorado impose no individual liability upon stockholders.

The statutes of Colorado are a part of the contract of subscription, but the laws of California are not and cannot be a portion of the contract between a Colorado corporation and its stockholders.

"The defendant took stock in the Tacoma bank subject to the burden of the law, which he impliedly agreed to bear, as he could not otherwise have become a stockholder. [Lowry v. Inman, 46 N. Y. 119]. That burden is an asset, vested in the receiver, and can be enforced in this state the same as a promissory note, not because the laws of Washington are in force here, but because the defendant voluntarily assented to the conditions upon which the bank was organized. As was said in the case last cited, 'a personal liability of stockholders for the debts of a corporation, in virtue of the charter, is not in the nature of a penalty of forfeiture, and does not exist solely as a liability imposed by statute. It is not enforced simply as a statutory obligation, but is regarded as voluntarily assumed, by the act of becoming a stockholder. It is like other obligations, assumed in the form prescribed by the laws of the place where made, and, being valid there, is enforceable everywhere. Its validity, interpretation and effect are to be determined by the *lex loci*, but the remedy is governed by the *lex fori*.' While the liability is, for convenience, frequently called statutory, because the statute, which is the constitution of the bank, affixed the obligation to the ownership of stock, it is in fact contractual and springs from an implied promise."

Howarth v. Angle, 162 N. Y. 187.

In the case of Ferguson v. Sherman, 116 Cal. 169, the Supreme Court of California very carefully considered and passed upon the liabilities of the stockholders of a corporation organized in Kansas, and held that the law of the state in which that corporation was organized, governed its relation to its stockholders and enforced the claim of a creditor of the corporation

against the defendants who were its stockholders, based upon the provisions of the laws of Kansas and held that the so-called statutory liability was "a simple personal liability growing out of the contract of the shareholder."

"The individual liability of the stockholder under that Act (National Bank Act), is an essential element in the contract by which the stockholder became a member of the corporation. It is voluntarily entered into by subscribing for and accepting shares of stock, its obligation becomes a part of every contract, debt and engagement of the bank itself as much so as if they were made directly by the stockholders instead of by the corporation."

Richmond v. Irons, 121 U. S. 27.
Stuart v. Hayden, 169 U. S. 1.
Flash v. Conn, 109 U. S. 371.
Hatch v. Dana, 11 Otto 205.
Matteson v. Dent, 176 U. S. 521.
Bailey v. Hollister, 26 N. Y. 112.

In the case of Russell v. Pac. Ry. Co. (113 Cal. 258), the defendants were stockholders in corporations organized in the state of Illinois to operate street railroads in the city of Los Angeles, and the Supreme Court of California held in effect that the law of the place of incorporation governs the liability of the stockholders, but that the claim of plaintiff in that case could not be enforced because the law of Illinois limits the mode of enforcement to a remedy, which could not be exercised in California.

The court said:

"The general rule upon this subject is very well established. Where a statute creates a right and prescribes a remedy for its enforcement, that remedy is exclusive. Where a liability is created, which is not penal, and no remedy is prescribed, the liability may be enforced wherever the person is found. The procedure will, however, be entirely governed by the law

of the forum. If the law creating the liability provides for a particular mode for enforcing it, the mode limits the liability.

*"If it be a contract, the parties here contracted with the understanding that they can be held liable in no other way.* * * *

"By the eighth section of the Illinois statute above quoted a special remedy is provided, and not only so, but plainly it was intended that it should be the only remedy.

"By the first clause, apparently an absolute liability is imposed upon the stockholder for the debts of the corporation to the extent of the amount unpaid upon his stock. If this were all, the liability would be primary, and could be enforced without suing the corporation and without reference to its solvency. The Illinois remedy cannot be imported here."

Russell v. Pacific Ry. Co., 113 Cal. 261.

"In all the diversity of opinion in the courts of the different states, upon the question how far a liability imposed upon a stockholder in a corporation by the law of the state which creates it, can be pursued in a court held beyond the limits of that State, no case has been found in which such a liability has been enforced by any court, without a compliance with the conditions applicable to it under the legislative Acts and judicial decisions of the State which creates the corporation and imposes the liability. To hold that it could be enforced without such compliance would be to subject stockholders residing out of the State to a greater burden than domestic stockholders."

Fourth National Bank v. Francklyn 120 U. S. 747.

The Supreme Court of California, in the cases of Dennis v. Superior Court, 95 Cal. 548, and Kennedy v. Cal. Savings Bank, [97 Cal. 96], held that the obligation of the stockholders under the California statute arises upon contract.

In the latter case the court said:

" It would seem, therefore, that an action against

a stockholder to recover his proportion of the amount due upon a contract made by a corporation, which is only an agency adopted by him for the transaction of business, was essentially an action founded upon a contract. [Norris v. Wrenschall, 34 Md. 496; Corning v. McCullough, 1 N. Y. 47; Hawthorne v. Calef., 2 Wall 10; Dennis v. Superior Court, 91 Cal. 548; Cook on Stockholders, Sec. 243; Allen v. Sewall, 2 Wend 327; Ex Parte Van Riper, 20 Wend 616.]

"In the case of Dennis v. Superior Court, 91 Cal. 548, the question whether an action like this was one arising upon contract was directly involved, and we therefore, said:

"We think that the personal liability of a stockholder of a corporation for his proportion of the indebtedness of the corporation is an obligation arising upon contract within the meaning of Sec. 112, of the Code of Civil Procedure, giving original jurisdiction to a justice's court in actions arising upon contract for the recovery of money, when the amount claimed is less than three hundred dollars."

Kennedy v. Cal. Savings Bank.

"Liability of Shareholders in Foreign Corporations. —The contract of a shareholder is measured by the charter or constating instruments of the company of which he agrees to become a member. When a person agrees to become a shareholder in a corporation chartered by a foreign State, he must necessarily be held to contract with reference to all laws of the State which enter into the constitution of the company; and if the charter or incorporation Act of the company provides that its shareholders shall be individually liable to creditors, he will become individually liable to the same extent as any other member, not because he is bound by the laws of the State where the company was incorporated, but because he has voluntarily agreed to the terms of the company's constitution. On the other hand, if the constitution to which a corporator has agreed does *not* provide for individual liability to creditors, he cannot be charged with individual liability anywhere."

Morawetz on Corporations, Sec. 874.

"The only contract ever made by Van Santvoord, which has any bearing on the present issue, was that which he made on becoming a party to the Connecticut charter. That certainly did not make him a partner, either of the defendant Brainard, or of Mr. Redfield, the secretary of the company. He gave no power to either to contract for him, and no consent to be responsible for their tortious acts. His contract with the State of Connecticut was for immunity from personal liability. * * * No statute of that State, or of this, has been violated either by him or by the corporation. The fact is found, that his contract was that of a corporator, with immunity from personal responsibility. Even if the charter had been silent, he would not have been liable for the debts of the company, either there or here, unless by force of some statute depriving him of his exemption. [*Ex parte* Riper, 20 Wend 616; Seymour v. Sturgess, 26 N. Y. 134.] The boats of the company were not his boats. Its debts were not his debts. In the case of the Bank of Augusta v. Earl, the Chief Justice said: "Whenever a corporation makes a contract, it is the contract of the legal entity of the artificial being created by the charter, and not the contract of the individual members." [13 Peters 587.] In Connecticut the defendant was clearly entitled to protection. How does it happen that on one side of the State line he owns the property, which, on the other, belongs to the company, or that by crossing the New York boundary he assumes all the liabilities of the corporation? It is conceded that he was not a partner when the company kept an office in Connecticut. He has done nothing since, and nothing has been done by the corporation which changes in law their mutual relations."

Merrick v. Van Santvoord, 34 N. Y. 208.

Liability depends upon and is determined by the charter and statutes of the State which created the corporation.

Cook on Stockholders, Sec. 223.

This liability is recognized upon the theory that it arises from contract and is not penal in character, and depends upon the fact that the stockholder contracted with reference to the laws of the State of incorporation, and that those laws became part of his contract and are therefore the gauge of his liability. The contract is complete when the corporation is organized and a stockholder subscribes for stock and the California statute is unconstitutional, because it undertakes to add a new liability upon the part of the stockholder.

The act of a corporation in coming into California to do business, is not the act of a stockholder. He may or may not have consented to it, but under the terms of Section 322, if it be valid, a stockholder would be liable in either case, or even in case he had protested against doing business in this State, and had been overruled by a majority of the stockholders.

It is true that the legislature of California has the power to impose the conditions upon which a corporation can do business in California, but that is a power relating only to liability or duties imposed upon the corporation itself, and does not include a power to create new liability or change the relations between the corporation and its stockholders, or between creditors, whose rights arise through the corporation and the stockholders.

Will it be contended that the legislature of a State could authorize a foreign corporation doing business in the State, to assess its stock and sell the same for the assessment or recover the amount of the assessment by suit?

Yet such a statute would not impair the obligation of the contract any more than a statute which creates a liability which the original contract did not include.

The principle that a State can impose conditions upon a corporation of another State coming within its

borders, to do business or even forbid such corporations to do business within a State, is one which has no bearing upon the proposition at issue in this case. The conditions that may be imposed and the regulations which can be enforced under that rule of law, are such as affect the corporation itself which is an artificial being created by an act of incorporation, but such regulations and conditions cannot create liabilities which will affect stockholders other than those contemplated by the laws under which the corporation was organized. For instance, the legislature of the State of California might provide, that every foreign corporation doing business within the State, should pay a certain amount into the State Treasury and that the proper officials might maintain an action for the recovery of that amount from such corporations, but certainly it cannot be claimed that a similar statute providing for the recovery of any amount from the individual stockholders of a foreign corporation would be valid.

The act of the corporation in coming into the State of California to transact business was not the act of the stockholders, nor can it in any way effect their relationship to the corporation, or its creditors.

"Whenever a corporation makes a contract it is a contract of the legal entity of the artificial being created by the charter and not a contract of the individual members."

Bank v. Earl, 13 Peters, 587.

"The corporation itself is a mere legal entity, existing only in legal contemplation, and is created for the convenience and benefit of the stockholders. All its dealings are for and on their account. It can contract no debts, except under the authority, express or implied, of the stockholders, and through their corporate agents."

Brown v. Hitchcock, 36 Ohio St. 678. Cited

with approval by the Supreme Court of California, in the case of Kennedy v. Cal. Savings Bank, 97 Cal. 96.

The liability, then if it exists, must be purely the creation of the statute.

We submit that such a liability cannot exist, or be enforced, because no statute can create the relationship of debtor or creditor without the consent of the debtor.

The inhibition against statutes which impair the obligation of contracts has received a very broad and liberal construction in a long line of decisions upon the subject.

"Upon this branch of the case, certain principles have been established by the Federal Supreme Court, and are no longer subjects of controversy. That court having paramount jurisdiction upon questions arising under the Constitution of the United States, we have only to ascertain what has been distinctly determined by it, and to apply those doctrines to the case before us. Thus it has been adjudged that an executed grant is as fully within the constitutional protection as an executory agreement. Hence, a conveyance which takes effect to transfer a title by the delivery of the instrument, cannot be revoked or impaired by State legislation. [Fletcher v. Peck, 6 Cranch 87, 136-139.] Then the provision is not limited to dealings between individuals, but extends equally to contracts between the State sovereignties and private parties; nor, in respect to contracts to which the State is a party, is it confined to such as relate to definite pecuniary obligations or to specific real or personal property. It embraces charters and grants of corporate powers and privileges, when conferred for private and pecuniary objects. [Dartmouth College v. Woodward, 4 Wheat. 518; Green v. Riddle, 8 *Id.*, 2; Gorden v. The Appeal Tax Court, 3 How., 133; State Bank of Ohio v. Knoop, 16 *Id.*, 369; Dodge v. Woolsey, 18 *Id.*, 331.] And it also applies to corporations created under general laws. Such statutes are considered as proposi-

tions extended to private citizens; and when they are accepted and a corporation has been organized pursuant to their provisions, a contract between the State and the private adventurers is created, which is equally invoilable as the terms of a charter granted by special statute."

In the matter of Oliver Lee & Co.'s Bank, 21 N. Y. 14.

"The contract among the shareholders cannot be impaired. The purposes of a corporation cannot be altered. Whatever doubt there may be as to the correctness of the doctrine that a charter of incorporation embodies a contract between the State and the corporators, there can be no doubt that the charter of an ordinary business corporation embodies a contract among the corporators themselves. The shareholders of such a corporation mutually agree to unite for the purposes indicated in their charter. Each shareholder agrees to contribute his proportionate share of the capital of the association, and each, in return, becomes entitled to a share in the profits and in the management of the corporate affairs. The agreement thus created is, in the strictest sense of the word, a contract; and every reason exists for treating it as a contract within the meaning of the provision of the Constitution of the United States, that no State shall pass any law impairing the obligation of contracts."

Morawetz on Corporations, Sec. 1047;
See also *Id.*, Sec. 1044, 1045;
Farrington v. Tenn., 95 U. S. 679;
White v. Hart, 13 Wall. 647;
Hoffman v. City of Quincy, 4 Wall. 550.

"As the law enters into the contract, and forms a part of it, the obligation of such contract must depend upon the law existing at the time the contract was made. The contract being then complete and operative, the legislature cannot, by a subsequent act, impair its obligation by requiring the performance of other

conditions, not required by the law of the contract itself."

Robinson v. Magee, 9 Cal. 84.

"The power to impose conditions after contract is once completed and perfected, is nothing but a power to impair its obligation and this the constitution has prohibited."

McCanley v. Brooks, 16 Cal. 33;
Rose v. Estudillo, 39 Cal. 274;
Bates v. Gregory, 89 Cal. 393.

In the case of a corporation, the only relation between the stockholders and the creditors is that which arises by reason of the acts of the corporation. The latter is the agent of the stockholders and its actions are binding upon them only in so far as they are authorized by the articles of incorporation, and the statutes under which the corporation is organized.

When the legislature of a State, other than the one in which the incorporation was made, undertakes to establish an additional relation between the creditors of the corporation and its stockholders, it makes a new contract, and imposes new obligations without the consent of the stockholders.

The court in this case found that "the Los Angeles Iron & Steel Company, was a corporation organized on the 8th day of March, 1893, and incorporated under the laws of the State of Colorado; and that the seventh provision of its articles of incorporation is as follows, to-wit: The said company is created for the purpose of carrying on part of its business beyond the limits of the State of Colorado, and the principle office of said company in the State shall be kept at the city of Denver, Arapahoe county, and the principal plant and principal operations of said company beyond the limits of the State shall be in Los Angeles county, State of California, and such other places in the State of Cal-

*ifornia* as may be decided upon by the board of directors. The principal business of said company in the State of Colorado shall be carried on in Arapahoe county.

"That the defendants are and were at all times herein mentioned residents and citizens of the State of California."

But those facts cannot affect the constitutionality of the provisions of the Civil Code of California in question. Neither the residences of the stockholders, nor the purposes of the corporation can give validity to an Act, which would otherwise be void.

The theory that if citizens of a State go into another State to incorporate a company for the purpose of doing business within the State of their residence, the corporation will be treated as fraudulent, and as a partnership, while it finds some support in the early cases has been overthrown by the later cases, and the modern doctrine is well established that such corporations are recognized by comity, and the stockholders treated in the same manner, as if they were residents of the State of incorporation.

"The second ground upon which the liability of the defendants, as partners, is claimed to arise is, that the company, although it may have a legal existence in Kentucky, has, and can have, no such existence in Ohio; that its incorporation in the former State to conduct a business beyond its limits, and within Ohio, is a fraud upon our laws, because the stockholders are not, by the laws of Kentucky, individually liable to any extent for the debts of the corporation. How this fact, if true, in the absence of a statutory regulation, operates to make the defendants liable on a promise they never made, either expressly or impliedly, it is difficult to understand. It is not doubted, that a State may forbid a foreign corporation from exercising corporate powers within its limits, or may lay such restrictions upon their exercise as will prevent it, except

on condition that the stockholders become bound for the debts of the corporation. But the mere circumstance, that, by the laws of the State by which the corporation is created, the stockholders may not be individually liable, to any extent, for the debts of the corporation has never been deemed a sufficient ground for the exclusion of the company from exercising its corporate powers within this State."

Bank v. Hall, 35 Ohio, 166;

"While the fact that citizens of Rhode Island go to Kentucky for an act of incorporation is one that naturally excites curiosity, if not suspicion, as to the motives and good faith of the concern, yet so long as it pursues a lawful business, and violates no law of this State, we do not see how we can refuse to recognize it. True, the advantages of yearly statements and liability of stockholders, given the creditors under our statute, are wanting; but that is a matter for those who deal with the corporation to consider. We can hardly deny the right of a foreign corporation to do business in this State, upon considerations of public policy, when our own statutes (Pub. Laws, c. 1200) expressly provide for corporations formed in this State for carrying on business out of the State."

Oakdale Mfg. Co. v. Garst, 28 Atlantic Rep. 974.

"The truth is, foreign corporations are not properly to be regarded with suspicion, nor should unnecessary restraints be imposed upon their doing business in our midst. They carry no black flag, and the policy of all civilized nations is to grant them recognition in their courts. It seems to me that every reason which urges upon us the recognition of foreign corporations organized with power to do business in our State and composed of citizens of the foreign State, is equally potent when the foreign corporation is composed of our own citizens. It has always been supposed that a State should at least deal as liberally with its own citizens as with those of foreign States. If, therefore, we permit foreign citizens to come within our limits in the form of a foreign corporation organized with power to do business here and recognized by us, why

should we not permit our own citizens to avail themselves of the like privilege? If we impose terms and conditions upon foreign corporations, as such, doing business here, those same terms and conditions still and equally apply to a foreign corporation when composed of our own citizens. Why should they not be placed at least upon an equality with the foreign citizen?"

Demarest v. Flack, 128 N. Y. 219.

"Before approaching the discussion of the principal question in this case, certain questions of subordinate importance may be disposed of, which have been raised upon the argument. One of them relates to the right of this corporation to recognition in our courts, as affected by the fact that the incorporators are, with one exception, citizens and residents of this State. Whatever inferences can be drawn as to the motives which took them into a foreign jurisdiction to organize a corporation under its laws, I agree with the general term that any such question has been once and for all settled by our recent decision in the case of Demarest vs. Flack, (128 N. Y. 205.) It appeared in that case that citizens of this State, incorporated under the laws of West Virginia, to carry on a certain business, with the principal office of the company in New York City, where only it had been conducting its operations. It was claimed that these facts invalidated the corporation, and that there was a manifest evasion of, and fraud upon the laws of the State. But it was held that they constituted no reason for refusing recognition to the corporation; that there was no essential difference between a corporation formed under the laws of a foreign State, the members of which were its own citizens, and one so formed, the members of which were citizens of our own State. If our citizens are attracted to other jurisdictions for purpose of incorporation, because of more favorable corporation or taxation laws, I cannot see in that fact, however, and in whatever sense, to be deplored, any reason that they should be prevented from employing here the corporate capital in the various channels of trade or

manufacture. That, as it seems to me, would be a rather hurtful policy and one not to be attributed to the State."

Lancaster v. A. I. Co., 140 N. Y. 582.

The theory of the earlier cases that a corporation could do no business outside of the State in which it was organized, fell, because in conflict with the necessities for the development of trade and commerce, which made it that corporations should be able to transact business in various States and countries.

If the Los Angeles Iron & Steel Company had no right to do business in the State of California, its contracts were void and its stockholders cannot be held for the liability arising therefrom.

If it had the right to do business in the State of California, it did so as a Colorado corporation recognized by the comity of States and the liability of its stockholders, must be determined by the laws of Colorado in which it was incorporated.

It is to be regretted that the amount involved in this case was not sufficient to give jurisdiction upon appeal to the Supreme Court of California, so that the principles which were involved might have first been submitted to the Supreme Court of this State, before going to the Supreme Court of the United States. The question involved is similar, however, in some degree to that in the case of McGowan v. McDonald, 111 Cal. 57, in which the court seems to hold that the point raised, that the provision for the liability of stockholders impaired the obligations of the contract, would have been well taken as to the corporation mentioned in that case if the power to alter and amend the laws with reference to corporations had not been reserved to the legislature by the Constitution of 1849. But in the case of a corporation organized in another State the legislature of California has no reserved power,

and no right therefore, to impose any additional obligations upon the stockholders of such corporation.

Although the amounts involved in this case are small, the matter to be decided is one of far reaching importance because it involves a determination of the power of the States to impose liabilities upon the stockholders of foreign corporations.

If it be held that such power exists the stockholders of every corporation will be in constant danger of having individual indebtedness created for them without their knowledge or consent, corporate business will be hampered by the overthrow of the primary principle upon which such organizations rest, and the shareholders of corporations transacting business throughout the United States will have personal burdens imposed upon them as varied, as the ingenuity of political theorists in forty-five States can devise.

We respectfully submit that for all of the reasons above given the judgment should be reversed.

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M. L. Graff, *of Counsel.*